

Message Text

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PAGE 01 STATE 167575
ORIGIN STR-07

INFO OCT-01 ARA-10 ISO-00 SIG-03 MMO-01 EA-10 EUR-12
AGR-01 CEA-01 CIAE-00 COME-00 DODE-00 EB-08
FRB-03 H-01 INR-10 INT-05 L-03 LAB-04 NSAE-00
NSC-05 PA-01 CTME-00 AID-05 SS-15 ITC-01 TRSE-00
ICA-11 SP-02 SOE-02 OMB-01 DOE-15 /138 R

DRAFTED BY STR:MHATHAWAY:MM
APPROVED BY STR:RRIVERS
COMMERCE:WKRIS-COMM:JLIGHTMAN(SUB
COMMERCE:VTRAVAGLINI(SUBS)
COMMERCE.DALLEN(SUBS)
DEFENSE:JCARNES(SUBS)
INTERIOR:HANDERSON(SUBS)
LABOR:FLAVALLEE(SUBS)
TREASURY:EBARBER(SUBS)
STATE:TO'HERRON(SUBS)

-----123685 010518Z /10

P 010115Z JUL 78
FM SECSTATE WASHDC
TO ALL OECD CAPITALS PRIORITY
ALL EAST ASIAN AND PACIFIC DIPLOMATIC POSTS
AMEMBASSY MEXICO CITY
AMEMBASSY BRASILIA
AMEMBASSY CARACAS

LIMITED OFFICIAL USE STATE 167575

MTN DELEGATION GENEVA

E.O. 11652:

TAGS: ETRD, GATT

SUBJECT: COMMERCIAL COUNTERFEITING
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PAGE 02 STATE 167575

1. AS FOLLOW-UP TO MINISTERIAL-LEVEL MEETINGS JUNE 19 AND
20, 1978 IN WASHINGTON, MTN DEL SHOULD IMMEDIATELY PRESS
OTHER DELEGATIONS FOR COMMITMENT PRIOR TO JULY 15 DEADLINE
TO REACH AGREEMENT TO CURB COMMERCIAL COUNTERFEITING.
COMMERCIAL COUNTERFEITING IS A SERIOUS AND GROWING PROBLEM.
THIS PRACTICE INVOLVES THE SALE OF PRODUCTS WITH BOGUS

TRADEMARKS, IN ESSENCE DEFRAUDING THE CONSUMER. ALMOST ALL COUNTRIES AGREE THAT SUCH PRACTICES SHOULD BE ABOLISHED AND THERE IS A GROUND SWELL OF INDUSTRY SUPPORT INTERNATIONALLY FOR A TIGHTENING OF INTERNATIONAL RULES IN THIS AREA.

2. CURRENT U.S. THINKING IS THAT SUCH AN AGREEMENT WOULD BUILD UPON CURRENT INTERNATIONAL RULES REGARDING TRADEMARK RIGHTS BY REQUIRING THE SEIZURE&FORFEITURE OF COUNTERFEIT GOODS. U.S. CONGRESS IS CONSIDERING AS AMENDMENT TO CUSTOMS PROCEDURAL REFORM ACT MEASURE TO REQUIRE FORFEITURE OF IMPORTED MERCHANDISE UNLAWFULLY BEARING A TRADEMARK OR TRADE NAME WHICH IS ENTITLED TO PROTECTION UNDER U.S. LAW.

S. LAW CURRENTLY PROVIDES FOR THE SEIZURE BUT NOT FORFEITURE OF SUCH MERCHANDISE. SUCH ACTION WOULD, UNDER U.S. LAW, BE TAKEN ONLY THROUGH A FAIR AND TRANSPARENT ADMINISTRATIVE PROCEDURE WITH RIGHT TO JUDICIAL REVIEW. THE AMENDMENT UNDER CONSIDERATION HAS PASSED THE SENATE WITH NO APPARENT OPPOSITION YET ON THE PART OF HOUSE CONFEREES.

3. BEGIN FYI: ALTHOUGH PARIS INDUSTRIAL PROPERTY CONVENTION, ARTICLE 9, ALREADY DEALS WITH THIS ISSUE IT DOES NOT REQUIRE SEIZURE AND CONFISCATION OF COUNTERFEIT GOODS BECAUSE A CURRENT EFFORT TO REVISE THE PARIS CONVENTION IS COMPLICATED BY DEVELOPING COUNTRY DIALOGUE WHICH IS LIMITED OFFICIAL USE

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NOT FAVORABLE TO INDUSTRIAL PROPERTY PROTECTION. THE U.S. DOES NOT WISH TO INJECT THIS ISSUE INTO THOSE NEGOTIATIONS AT THE PRESENT TIME. HOWEVER, THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, THE SECRETARIAT OF THE PARIS CONVENTION, IS CONVENING A MEETING JULY 3-6 TO CONSIDER A NUMBER OF TRADEMARK ISSUES RELATED TO CONSUMER PROTECTION, INCLUDING THE QUESTION OF THE COUNTERFEITING OF TRADEMARKED PRODUCTS. END FYI.

4. DEL SHOULD PROVIDE PRINCIPLES OF AGREEMENT CONTAINED IN PARAGRAPH 5 AND SHOULD EXPLORE WAYS AND MEANS OF ENGAGING IN NEGOTIATIONS OF DETAILS OF AGREEMENTS FOLLOWING JULY 15 WITH AT LEAST THOSE COUNTRIES IN WHICH THE U.S. HAS MAJOR EXPORT INTEREST, E.C., JAPAN, CANADA, AND MAJOR LDC'S. IN SUCH DISCUSSIONS DEL SHOULD STRESS THE PROPOSED AGREEMENT WOULD BE OF MUTUAL BENEFIT TO BOTH EC (PROTECTING TRADEMARK INTERESTS) AND LDC (IMPAIRMENT OF LICENSES, IF NOT OUTRIGHT OWNERSHIP). IF AGREEMENT IN PRINCIPLE CAN BE REACHED AT MINISTERIAL LEVEL IN JULY DETAILS OF AGREEMENT COULD BE DRAFTED SUBSEQUENTLY.

5. PRINCIPLES OF AGREEMENT:

DESIRING TO FURTHER THE OBJECTIVES OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE; CONSIDERING THAT TRADE IN COUNTERFEIT MERCHANDISE BURDENS INTERNATIONAL COMMERCE, MISLEADS CONSUMERS, IMPAIRS MARKETS, AND PREJUDICES THE LEGITIMATE INTEREST OF TRADE; RECOGNIZING THAT ACTIONS TO DISCOURAGE TRADE IN COUNTERFEIT MERCHANDISE CAN BE MADE MORE EFFECTIVE BY STRENGTHENING EXISTING SANCTIONS AGAINST SUCH PRACTICES; AND RECOGNIZING THAT DETERRING TRADE IN COUNTERFEIT MERCHANDISE WILL FOSTER REDUCTION AND ELIMINATION OF THE TRADE RESTRICTING OR DISTORTING EFFECTS OF COMMERCIAL COUNTERFEITING AND TEND TO BRING SUCH PRACTICES

UNDER MORE EFFECTIVE DISCIPLINE; THE UNDERSIGNED REPRESENT LIMITED OFFICIAL USE

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TATIVES ON BEHALF OF THEIR RESPECTIVE GOVERNMENTS AGREE TO ENTER INTO NEGOTIATIONS FOR THE PURPOSE OF REACHING AN AGREEMENT EMBODYING THE FOLLOWING PRINCIPLES:

1. THAT IT IS THE JUDGMENT OF THE PARTIES HERETO THAT TRADE IN COUNTERFEIT MERCHANDISE IS A SERIOUS FORM OF COMMERCIAL MISCONDUCT WHICH IS BOTH DECEPTIVE TO CONSUMERS AND HARMFUL TO TRADERS, AND THAT IT IS TO THE MUTUAL BENEFIT OF THE UNDERSIGNED COUNTRIES THAT COUNTERFEIT MERCHANDISE SHOULD, UPON ENTERING THE COUNTRY OF IMPORTATION, BE SUBJECT TO SEIZURE AND FORFEITURE.
2. IT IS RECOGNIZED BY THE PARTIES HERETO THAT SUCH SANCTIONS SHOULD BE ADOPTED IN CONJUNCTION WITH SUFFICIENT PROCEDURAL SAFEGUARDS TO PREVENT THE ESTABLISHMENT OF A NONTARIFF BARRIER TO LEGITIMATE TRADE.
3. THAT THE PARTIES AGREE TO PURSUE THIS MATTER AS EXPEDITIOUSLY AS POSSIBLE, TAKING ALL NECESSARY STEPS INTERNALLY, SO THAT DETAILED NEGOTIATIONS AND DRAFTING CAN BEGIN NOT LATER THAN SEPTEMBER 15, 1978.
6. FOR EMBASSIES: GIVEN THE LATE DATE AT WHICH THIS ISSUE HAS BEEN RAISED IN THE MTN IT WILL BE NECESSARY TO SECURE MAXIMUM SUPPORT FROM CAPITALS. AMBASSADORS ARE REQUESTED THEREFORE TO SOLICIT SUPPORT FOR THE INCLUSION OF AN AGREEMENT ON COUNTERFEITING IN THE MTN WITH HOST GOVERNMENTS. YOU SHOULD STRESS THAT THE UNITED STATES VIEWS THIS HIGH PRIORITY ISSUE AS ONE WHICH COULD BE OF BENEFIT TO ALL AND WOULD HARM NO LEGITIMATE INTERESTS.

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7. PLEASE INFORM STR/WASHINGTON (HATHAWAY,GC'S OFFICE) OF RESPONSE. IT WOULD ALSO BE USEFUL TO RECEIVE INFORMATION ON PRESENT LAW IN HOST COUNTRIES, PARTICULARLY WHETHER FORFEITURE EXISTS IN OTHER AREAS OF LAW, AND IF SO, REQUIRED PROCEDURES AND FREQUENCY OF USE.

8. TPSC TASK FORCE CHAIRED BY HATHAWAY, GC'S OFFICE, HAS BEEN FORMED TO DEAL WITH THIS MATTER.

9. REPLY SOONEST.

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DRAFTED BY STR:SBWILSON:SMS

APPROVED BY STR:SBWILSON

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FM SECSTATE WASHDC

TO USMISSION GENEVA PRIORITY

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USMTN

FOL RPT STATE 167575 SENT ACTION ALL OECD CAPITALS, ALL EAST ASIAN
AND PACIFIC DIPLOMATIC POSTS, MEXICO, BRASILIA & CARACAS
DTD 01 JUL 78

QUOTE: LIMITED OFFICIAL USE STATE 167575

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TAGS: ETRD, GATT

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PRODUCTS. END FYI.

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BEEN FORMED TO DEAL WITH THIS MATTER.

9. REPLY SOONEST. VANCE UNQUOTE CHRISTOPHER

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NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: COUNTERFEITING
Control Number: n/a
Copy: SINGLE
Draft Date: 01 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE167575
Document Source: CORE
Document Unique ID: 00
Drafter: MHATHAWAY:MM
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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Format: TEL
From: STATE
Handling Restrictions: n/a
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Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
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Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1853561
Secure: OPEN
Status: NATIVE
Subject: COMMERCIAL COUNTERFEITING LIMITED OFFICIAL USE LIMITED OFFICIAL USE
TAGS: ETRD, GATT
To: OECD POSTS EA POSTS MULTIPLE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/f561566b-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014